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5 Attorneys for Defendant, PABCO BUILDING PRODUCTS, LLC

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 GREGORY CHAMBERS,
12 Plaintiff,
13 vs.
14 PABCO, LLC,
15 Defendant.

No. C07-03119 EMC

ANSWER TO COMPLAINT

17 COMES NOW, Defendant PABCO BUILDING PRODUCTS, LLC ("Defendant"),
18 incorrectly sued herein as PABCO, LLC, and answers the allegations of the within Employment
19 Discrimination Complaint, as follows:

20 1. Defendant admits the allegations of Paragraphs 1 and 2 of the Complaint.
21 2. Answering the allegations of Paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the
22 Complaint, Defendant denies each and every matter, fact and allegation contained therein, both
23 generally and specifically.

24 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that the
25 within Complaint fails to set forth facts sufficient to constitute a cause of action.

26 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
27 the within Complaint fails to state a claim upon which relief may be granted.

1 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that the
 2 within Complaint is barred by applicable statutes and/or periods of limitation, including but not
 3 limited to 29 U.S.C. Section 2000-e(5).

4 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
 5 the within Complaint is barred because Plaintiff failed to exhaust his administrative remedies prior
 6 to filing the instant action, including but not limited to the administrative remedies provided by 42
 7 U.S.C. Section 2000e-5(e).

8 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that the
 9 within Complaint is barred because Plaintiff failed to exhaust his remedies under his collective
 10 bargaining agreement's final and binding grievance and arbitration procedure prior to filing the
 11 instant action.

12 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that the
 13 within Complaint is barred because Plaintiff failed to exhaust his intra-Union remedies prior to
 14 filing the instant action.

15 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
 16 the within Complaint is barred by the doctrine of waiver.

17 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
 18 at all times relevant hereto it acted in good faith with respect to Plaintiff.

19 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
 20 Plaintiff was terminated for good faith and legitimate business reasons.

21 AS A TENTH THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 22 alleges that the within Complaint is barred by the doctrine of unclean hands.

23 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges
 24 that Plaintiff is barred from recovery due to his failure to mitigate damages.

25 AS A TWELFTH SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant
 26 alleges that Plaintiff is barred from recovering exemplary damages by applicable provisions of and
 27 amendments to the United States Constitution.

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1 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges
2 that the Court lacks jurisdiction of the subject matter of the within Complaint.

3 WHEREFORE, Defendant Pabco Building Products, LLC prays as follows:

4 1. That the within Complaint be dismissed in its entirety and with prejudice;
5 2. That Plaintiff take nothing by reason of the within Complaint;
6 3. For reasonable attorneys' fees;
7 4. For costs of suit herein incurred; and
8 5. For such other and further relief as the Court deems just and proper.

9 Dated: August 31, 2007.

DAVENPORT GERSTNER & McCLURE

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12 /s/
13 STEPHEN THOMAS DAVENPORT, JR.
14 Attorneys for Defendant,
15 PABCO BUILDING PRODUCTS, LLC
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